

FY 2008 PERFORMANCE BUDGET

INDEPENDENT COUNSEL

CONGRESSIONAL JUSTIFICATION

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I. Overview for Independent Counsel

A. General Overview

1. Introduction

In the 1988 Appropriations Act, Congress established a permanent indefinite appropriation to fund the expenses of Independent Counsel investigations and prosecutions. Under this appropriation, all necessary costs and expenses incurred in the pursuit of these investigations will be funded from amounts available in the Treasury.

2. Issues, Outcomes, and Strategies

Upon expiration of the Reauthorization Act of 1994, ongoing Independent Counsel investigations will continue their operations to conclusion. Expenditures for these operations will continue to be funded from the permanent indefinite appropriation.

3. Full Program Costs

Independent Counsel investigations were authorized by Congress in the 1978 Ethics in Government Act. The Authorization expired December 15, 1992, five years after the enactment of the Independent Counsel Reauthorization Act of 1987. However, the provisions of the chapter remained in effect for on-going investigations.

4. Performance Challenges

In June 1994, the Independent Counsel Reauthorization Act of 1994 was signed into law. On June 30, 1999, the Reauthorization Act of 1994 expired. To date there has been no reauthorization.

5. Performance of Commercial Activities

The Independent Counsel has not completed and does not have an A-76 commercial activities study underway.

III. Decision Unit Justification

A. Independent Counsel

Independent Counsel TOTAL	Perm. Pos.	FTE	Amount
2006 Actual Obligations			\$1,398,000
2007 Enacted with Rescissions			\$9,500,000
Adjustments to Base			
2008 Current Services			\$9,500,000
2008 Program Increases			
2008 Program Offsets (<i>if applicable</i>)			
2008 Request			\$9,500,000
Total Change 2007-2008			0

1. Program Description

Independent Counsel investigations were authorized by Congress in the 1978 Ethics in Government Act. The authorization expired December 15, 1992, five years after the enactment of the Independent Counsel Reauthorization Act of 1987. However, the provisions of the chapter remained in effect for ongoing investigations. In June, 1994, the Independent Counsel Reauthorization Act of 1994 was signed into law. On June 30, 1999, the Reauthorization Act of 1994 expired and to-date there has been no reauthorization. The provisions of the chapter remain in effect for ongoing investigations

Independent Counsel Investigations Costs				
Completed:				
<u>Special Counsel</u>	<u>Subject</u>	<u>Outcome</u>	<u>FY Begun</u>	<u>Cost</u>
Paul J. Curran	Improper financial transactions between the Carter Peanut Warehouse and the National Bank of Georgia		1979	\$162,809
<u>Independent Counsel</u>				
Arthur H. Christy	Illegal drug use by Hamilton Jordan , President Carter's Chief-of-Staff	Insufficient evidence	1981	181,938
Gerald Gallinghouse	Illegal drug use by Tim Kraft , President Carter's national campaign manager	No basis for prosecution	1981	3,348
Leon Silverman	Alleged improper business relationships between Labor Secretary Raymond Donovan's firm and organized crime figures	Insufficient Evidence	1982	326,444
Jacob Stein	Impropriety of AG Edwin Meese III involving financial transactions and appointments of business associates to federal jobs	No basis for Indictment	1984	311,848
<u>Independent Counsel</u> ¹				
Harper	Alleged willful failure to file an income tax return, subject's name under seal. ²	No indictment	1987	44,498
Leon Silverman	Reappointed in 1985 under court seal to investigate Raymond Donovan on same subject	Insufficient Evidence	1989	7,205

¹ Costs for Counsel established after 1986 reflect expenditures reported by Administrative Office of U.S. Courts.

Independent Counsel Investigations Costs				
Bruce	False statements by Interior Department Secretary Bruce Babbitt about an Indian casino license and activities surrounding the Department's decision regarding the license		1998	\$6,127,174
Lancaster	Influence peddling and campaign fund-raising improprieties by Labor Secretary Alexis Herman		1998	5,023,854
<u>Special Counsel</u>				
John Danforth	Review government employee and agent activity during the events surrounding the assault on the Branch Davidian compound in Waco, Texas on April 19, 1993.	Report Submitted to Deputy Attorney General Indictment	1999	28,878,529
<u>Independent Counsel</u>	<u>Subject</u>	<u>Outcome</u>	<u>FY Begun</u>	<u>Cost</u>
Sealed			1989	\$17,087
Alexia Morrison	Former AAG Theodore Olson giving false testimony before Congress ³	No basis for Indictment	1986	1,514,891
Whitney Seymour	Violation of federal conflict-of-interest laws by former White House aide, Michael Deaver	Conviction	1986	1,469,650
James McKay	Edwin Meese III (2nd Investigation) Violation of criminal laws by Franklyn Nofzinger on behalf of the Wedtech Corp.	No Indictment Conviction overturned	1987 1987	2,576,648 ⁴

² Charles Rauh originally appointed to investigation resigned shortly after because he could not accept certain potential restrictions on his legal practice.

³ James McKay originally appointed to investigation resigned a month later to avoid a conflict of interest.

Independent Counsel Investigations Costs

Lawrence Walsh	Secret sale of weapons to Iran and the diversion of profits to assist U.S.-backed Nicaraguan rebels, several defendants involved Sensitive Compartmented Information Facility	Convictions/ Pardons	1987	\$39,008,326 ⁵ 2,363,529 ⁶
Sealed			1991	87,377
Joseph DiGenova	Violation of the law and cover up of knowledge of the preelection search of President Clinton's passport files by White House officials	No Indictment	1993	2,472,613
Arlin Adams Larry Thompson (6/1/95)	Conspiracy to defraud the U.S. by Samuel Pierce and other HUD officials involving the Dept.'s rehabilitation program	Guilty Pleas/ Convictions Fines Collected	1990	\$24,132,488
Smaltz	Violation of federal laws by Agriculture Secretary Mike Espy for accepting gifts from regulated co.	Indictments/ Ongoing	1994	20,816,748
Pearson	Violation of federal laws by Commerce Secretary Ronald Brown for accepting more than \$400,000 from a business partner and filing inaccurate financial disclosure statements.	Transferred to the Justice Department	1995	2,826,859
Von Kann	Illegal fund-raising by Eli Segal , White House aide and AmeriCorps chief	No Indictment	1996	485,561

⁴ Cost breakdown between the two investigations are estimated at 50%/50%.

⁵ An additional \$98 thousand has been charged directly against the permanent indefinite IC appropriation. In April, 1995, \$380 thousand was credited to the account due to a reimbursement from the Judgment Fund for attorney fees.

⁶ An additional \$3,067 thousand has been charged directly against the permanent indefinite IC appropriation.

Independent Counsel Investigations Costs

<u>Independent Counsel</u>	<u>Subject</u>	<u>Outcome</u>	<u>FY Begun</u>	<u>Cost as of 8/01/06</u>
Starr Ray (10/18/99) Thomas	Violation of any federal criminal law relating to what has become known as the "Whitewater Affair", President Clinton's relationship with a former White House intern, the White House travel office, misuse of FBI files, and other matters -- several defendants involved	Indictments/ Guilty Pleas/ Report Submitted to Congress Ongoing	1994	\$55,105,992
Barrett	The criminal concealment of information about payments to his former mistress by HUD Secretary Henry Cisneros	Indictments/ Guilty Pleas Ongoing	1995	\$22,750,247
Ongoing Costs:				
<u>Special Counsel</u>				
Patrick J. Fitzgerald	Investigation of the alleged unauthorized disclosure of a CIA employee's identity.	Indictment	2004	\$2,202,641

Revised January 2007

2. Performance, Resources, and Strategies

In the 1988 Appropriations Act, Congress established a permanent indefinite appropriation to fund the expenses of Independent Counsel investigations and prosecutions. Under this appropriation, all necessary costs and expenses incurred in the pursuit of these investigations will be funded from amounts available in the Treasury.

a. Performance Plan and Report for Outcomes

In order to facilitate the functioning of these counsels and maintain their independence from the Department of Justice, a working arrangement was implemented in 1986 between the Administrative Office of the U.S. Courts (AOUSC) and the Department of Justice for the administrative support of Independent Counsel investigations. In a letter of agreement between the Department and the Administrative Office of the United States Courts (AOUSC), the Department was responsible for funding the appropriate costs of any Independent Counsel, while AOUSC was responsible for the disbursement and accounting of such funding. The Independent Counsel Reauthorization Act of 1994 directs AOUSC to provide administrative support and guidance to each Independent Counsel.

b. Strategies to Accomplish Outcomes

The Department provides funding periodically to AOUSC. This funding is available to pay the appropriate costs of any active Independent Counsel. Under P.L. 100-202, an Act making further continuing appropriations for 1988, a permanent indefinite appropriation was established. This authorization is included within the General Legal Activities appropriation language (101 Stat. 1329-9). All necessary funding is to be provided from general funds in the Treasury on an as needed basis. The Congress has directed the Comptroller General to conduct semiannual financial audits.

c. Results of Program Assessment Rating Tool (PART) Reviews

The Independent Counsel has not been selected for review under the Program Assessment Rating Tool (PART) process.

